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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/586,550	05/31/2000	Lee Benzinger	NAI1P002/00.056.01	5992

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EXAMINER

SNAPP, SANDRA S

ART UNIT PAPER NUMBER

3624

DATE MAILED: 10/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

8k

Office Action Summary

Application No.

09/586,550

Applicant(s)

BENZINGER ET AL.

Examiner

Sandra Snapp

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 8, 10 and 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9, 11-17, 19-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

Response to Amendment

The following Office Action is in response to the Amendment filed 7-14-03. Claims 1-23 are pending in the application. The rejection of claims 1-4, 6, 7, 9, 11-14, 16, 17 and 19-21 under 35 U.S.C. 102(e) as being anticipated by the Webber, Jr. patent (6,167,378) is herein repeated and made final. New claims 22-23 are also rejected under 35 U.S.C. 102(e) as being anticipated by the Webber, Jr. patent and this rejection is made final as it was necessitated by amendment. The rejection of claims 5 and 15 under 35 U.S.C. 103(a) as being unpatentable over the Webber, Jr. patent, in view of the Bigus patent is also herein repeated and made final.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, 6, 7, 9, 11-14, 16, 17 and 19-21 remain rejected under 35 U.S.C. 102(e) as being anticipated by the Webber, Jr. patent (6,167,378). New claims 22-23 are also rejected under 35 U.S.C. 102(e) as being anticipated by the Webber, Jr. patent. The Webber, Jr. patent discloses a method and the associated apparatus for dynamic adaptation of a system in accordance with a contract with criteria associated therewith, the method comprising:

governing a security related interaction between a plurality of components utilizing the criteria of the contract, the components including an intrusion detection module which is subject to the governing (col. 5, lines 4-15 and col. 8, lines 59-65), determining whether the security related interaction between the components meets the criteria (col. 7, lines 21-6, col. 9, lines 53-56 and col. 15, lines 13-24), and adapting the security related interaction between the components upon the criteria of the contract not being met (col. 12, lines 5-11 – deviation resolution- and col. 15, lines 13-24) (claims 1, 11 & 21);

the security related interaction between the components is adapted by adjusting the contract (col. 6, lines 37-67 and col. 7, lines 21-26) (claims 2 & 12);

the contract is adjusted by a method selected from the group consisting of deactivation of the contract, modification of the contract, deletion of the contract, and activation of a different contract (col. 8, lines 65-67)(claims 3 & 13);

the contract including a cost model criteria (col. 13, lines 24-28 and col. 14, lines 4-24)(claims 4 & 14);

the criteria is based on performance and service provisioning (col. 14, lines 4-24)(claims 6, 7, 16 & 17);

the components including the intrusion detection module and an analysis module (col. 14, lines 4-24 and col. 15, lines 25-43)(claims 9 & 19);

governing a security related interaction between a plurality of components utilizing the criteria of the contract, the components including a plurality of intrusion detection modules, and at least one firewall which is subject to the governing (col. 5, lines 4-15, col. 8, lines 59-65 and col. 14, lines 4-11), determining whether the security related interaction between the components

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meets the criteria utilizing an analysis module (col. 7, lines 21-6, col. 9, lines 53-56 and col. 15, lines 13-24), and adapting the security related interaction between the components upon the criteria of the contract not being met utilizing the analysis module (col. 12, lines 5-11 – deviation resolution-, col. 14, lines 4-24 and col. 15, lines 13-43) wherein the security related interaction between the components is adapted by adjusting the contract by a method selected from the group consisting of deactivation of the contract, modification of the contract, deletion of the contract, and activation of a different contract (col. 8, lines 65-67)(claim 21);

wherein the intrusion detection modules are adapted for communicating information to the analysis module for detecting intrusions (col. 14, lines 44-67 and col. 15, lines 1-4)(claim 22); and

information includes generalized intrusion detection objects (col. 15, lines 1-4)(claim 23).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 15 remain rejected under 35 U.S.C. 103(a) as being unpatentable over the Webber, Jr. patent, as applied above, and further in view of the Bigus patent (5,74,652). The Webber, Jr. patent discloses all the elements of the presently claimed invention, however the combination lacks the cost model criteria being based on resource utilization.

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The Bigus '652 patent teaches the cost model criteria being based on resource utilization (col. 1, lines 42-48). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Webber, Jr. method with the teaching of the cost model criteria of the Bigus '652 patent so as to economically maximize the effectiveness of the computer system.

Remarks

The Applicant has amended the claims to include the limitation of the interaction being security related. However, such is not novel as evidenced in the Webber patent, col. 15, lines 13-25. Webber specifically states that security may be provided by only activating contracts which are marked with a special authorization encryption, i.e. special terms directed to security purposes.

The Applicant argues that Webber is non-analogous art. The Examiner respectfully disagrees and takes the position that Webber is directed to the digital automation of a system by using contracts. Webber accomplishes such automation by using a system wherein "digital contracts are programmed to reflect the intended activity or operations of the parties." (Abstract). Such system is in keeping with the intention of the present invention as stated in the Field of Invention as "the invention relates to networks, and more particularly to dynamically adapting network operations."

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action with regards to claims 22 and 23. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sandra Snapp whose telephone number is 703-305-6940. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on 703-308-1065. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

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October 17, 2003


HANI M. KAZIMI
PRIMARY EXAMINER